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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,225	09/16/2003	Pontus von Bahr	514862000700	3377
20872 7590 08/08/2008 MORRISON & FOERSTER LLP 425 MARKET STREET SAN FRANCISCO, CA 94105-2482				
EXAMINER				
ALEXANDER, LYLE				
ART UNIT		PAPER NUMBER		
1797				
MAIL DATE		DELIVERY MODE		
08/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/664,225

Applicant(s)

VON BAHR ET AL.

Examiner

Lyle A. Alexander

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-16, 18-24, 26, 27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-16, 18-24, 26, 27 and 29-31 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Applicants' correctly noted the 6/5/08 Office action did not properly cited the newly applied reference Roller et al. (USP 7,192,782). This Office action will replace the 6/5/08 Office action and restart the period for response as of the mailing date of this new Office action. The substance of this new Office action is identical to that of the 6/5/08 Office action with the addition of the proper notation of the new reference Roller et al.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9,11-13, 18-23 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0904729 in view of Birks et al. together further in view of Roller et al. (USP 7,192,782).

See the appropriate paragraph of the 1/3/08 Office action for the teachings of EP 0904729 in view of Birks et al.

EP 0904729 in view of Birks et al. are silent to the pressure of the exhalation air from the buffer chamber to the NO sensor. Specifically EP 0904729 in view of Birks et al. are silent to the claimed suitable flow rate for the NO sensor that is lower than the exhalation flow rate.

Roller et al. teach a method and apparatus for measuring the concentrations of specific gases, such as No, in human breath samples. Roller et al. teach in columns 4-5 lines 65-3 respectively, supplying the breath sample to the NO analyzer at a first flow rate and a second flow rate which is less than the first. The taught **first flow rate** has been read on the claimed "exhalation flow rate" and the taught **second flow rate** has been read on the claimed "suitable

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flow rate for the NO sensor." Further, column 8 lines 17-23 teach the differential flow rates is accomplished by flow rate controller which has been read on the claimed "means for feeding the sample." Finally, columns 7-8 lines 66-23 respectively, teach it is advantageous to manipulate the pressures to "reduce line broadening as well as interference between absorption characteristics."

Roller et al. also teach in column 8 lines 60-63 pumping rates of the gas that vary from approximately 8.3-500 ml/s and has been read on the taught device as being capable of the claimed flow rate of 45-55 ml/s.

It would have been within the skill of the art to further modify over EP 0904729 in view of Birks et al. together further in view of Roller et al. and create the claimed different flow rates using a flow rate controller to gain the above advantages.

Claims 14-15, 26-27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0904729 in view of Birks et al. together further in view of Roller et al. (USP 7,192,782) as applied to claims 1-9, 11-13, 18-23 and 30-31 above, and further in view of Holowko et al.

See EP 0904729 in view of Birks et al. together further in view of Roller et al. (USP 7,192,782) *supra*.

See the appropriate paragraph of the 1/3/08 Office action for the teachings of Holowko et al.

Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0904729 in view of Birks et al. together further in view of Roller et al. (USP 7,192,782) as applied to claims 1-9, 11-13, 18-23 and 30-31 above, and further in view of Oswin et al.

See EP 0904729 in view of Birks et al. together further in view of Roller et al. (USP 7,192,782) *supra*.

See the appropriate paragraph of the 1/3/08 Office action for the teachings of Oswin et al.

Response to Arguments

Applicant's arguments with respect to claims 1-13 and 18-23 have been considered but are moot in view of the new ground(s) of rejection.

The claim limitations directed to "means for feeding the sample" have been treated under 35 USC 112 sixth paragraph.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Tuesday and Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Lyle A Alexander

Primary Examiner

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/Lyle A Alexander/

Primary Examiner, Art Unit 1797